

1 JOHN A. RUSSO, City Attorney, SBN #129729
RANDOLPH W. HALL, Assistant City Atty., SBN #080142
2 JAMES F. HODGKINS, Supervising Trial Atty., SBN #142561
CHARLES E. VOSE, Senior Deputy City Atty., SBN # 139700
3 One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
4 Telephone: (510) 238-2961, Fax: (510) 238-6500
25581/456878

5 Attorneys for Defendants
6 CITY OF OAKLAND, OAKLAND
POLICE DEPARTMENT, CHIEF WAYNE
7 TUCKER, SGT. BERNARD ORTIZ

8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 MIGUEL ORTEGA, BENJAMIN ORTEGA,

13 Plaintiffs,

14 v.

15 CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, In His
Capacity as the Police Chief of the City of
Oakland, RAMON J. ALCANTAR,
16 Individually and in his capacity as a Police
Officer for the City of Oakland, B. ORTIZ,
17 Individually and in his capacity as a Police
Officer for the City of Oakland, DOES 1
18 THROUGH 200,

19 Defendants.

Case No. C-07-02659 (JCS)

**DECLARATION OF CHARLES E. VOSE
IN SUPPORT OF MOTION TO STRIKE
AND MOTION FOR SANCTIONS**

Date: August 8, 2008
Time: 9:30 a.m.
Dept.: Courtroom A, 15th Floor
The Honorable Joseph C. Spero

20 I, Charles E. Vose, declare:

21 1. I am an attorney licensed to practice before all courts of the State of
22 California and am employed as a Deputy City Attorney in the Office of the City Attorney,
23 counsel of record for Defendants City of Oakland, Oakland Police Department, Chief
24 Wayne Tucker, and Sgt. Bernard Ortiz in the above-captioned action. The matters set
25 forth herein are personally known to me to be true and if called upon, I could competently
26 testify thereto.

1 2. On January 9, 2008, I sent Ms. Catherine Douat, Esq., then counsel of
2 record in this action, an e-mail addressing an issue that a cause of action was improperly
3 added to the Second Amended Complaint. A copy of the e-mail is attached as Exhibit 1. I
4 asked her if she would voluntarily dismiss the improper cause of action. Otherwise I would
5 be forced to file a Motion to Strike. Ms. Douat responded and volunteered that she would
6 file a Third Amended Complaint deleting the improperly added cause of action if we would
7 stipulate. Ms. Douat's response is also contained in Exhibit A. I agreed to the stipulation.
8 Ms. Douat responded on January 9 that she would file a Third Amended complaint that
9 would be the same as the First Amended complaint (except that it would add Sgt. Ortiz as
10 a defendant). A copy of her e-mail is attached as Exhibit B. In that e-mail string it was
11 agreed that the defendants would not have to file an answer to the Second Amended
12 Complaint and instead would file an answer to the Third Amended Complaint.

13 3. I heard nothing more from Ms. Douat on the matter, and no Third Amended
14 Complaint was ever filed. On April 29, 2008, I sent a letter to Mr. Steven R. Jacobsen,
15 Esq., also counsel of record in this matter, addressing a number of issues including the
16 issue regarding the improperly added cause of action. A copy of the April 29, 2008 letter
17 is attached as Exhibit C. In response, Ms. Douat then agreed to file a "corrected copy of
18 the Second Amended Complaint", acknowledging the wrong version of the Second
19 Amended Complaint was filed with the Court. A copy of Ms. Douat's April 29, 2008 e-mail
20 is attached as Exhibit D.

21 4. Again I heard nothing further from either Mr. Jacobsen or Ms. Douat. On
22 June 13, 2008, I called and left a message with Mr. Jacobsen to discuss the matter. On
23 June 20, 2008, I called Mr. Jacobsen again and finally spoke with him regarding the
24 matter. It was at this time I first learned that Ms. Douat was no longer associated with his
25 office. We discussed the matter and he indicated he would need an opportunity to review
26 the file. On June 20, 2008, I e-mailed Mr. Jacobsen the April 29, 2008 letter and some of

1 the above mentioned e-mail correspondence. Copies of my June 20, 2008 e-mails to Mr.
2 Jacobsen are attached as Exhibits E & F.

3 5. On June 24, 2008, I again called Mr. Jacobsen to discuss the matter. Mr.
4 Jacobsen acknowledged he had never seen the April 29, 2008 letter. He agreed to
5 dismiss the Ninth Cause of Action in the Second Amended Complaint. He stated he would
6 do so that week. I agreed that I would then immediately file an answer for all defendants
7 that I represented.

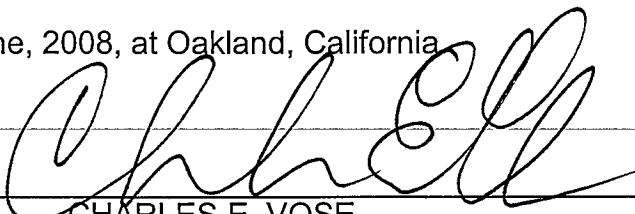
8 6. On June 25, 2008, I received a letter from Ms. Brenda Posada, newly
9 associated with Mr. Jacobsen's office. Her letter, a copy of which is attached as Exhibit G,
10 refused to dismiss the Ninth Cause of Action in the Second Amended Complaint. On June
11 26, 2008, Ms. Posada and I discussed the issue further. I reiterated that the Ninth Cause
12 of Action was added improperly and repeated my request that her office dismiss that
13 cause of action. She agreed to look at the file and would get back to me.

14 7. On June 27, I received a letter from Ms. Posada, a copy of which is attached
15 as Exhibit H, again refusing to dismiss the Ninth Cause of Action.

16 8. I have spent a total of 2 hours assisting in the preparation of the Motion to
17 Strike, including assembling the exhibits to this declaration, preparing this declaration, and
18 discussing and strategizing with Deputy City Attorney Kandis Westmore on the preparation
19 of the Motion to Strike.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed this 27th day of June, 2008, at Oakland, California

23
24 
25 CHARLES E. VOSE
26